IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LINK TREASURE LIMITED	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Civil Action No. 1:06-CV-1930-ODE
BABY TREND, INC.,	)	
	)	
Defendant.	)	
	)	
	)	

BABY TREND, INC.'S OPENING
***MARKMAN* BRIEF ON CLAIM CONSTRUCTION**

Pursuant to LPR 6.5(a), Defendant, Baby Trend, Inc. ("Baby Trend"), respectfully submits its Opening *Markman* Brief on Claim Construction ("*Markman* Brief") and in support thereof shows this Court the following:

I. INTRODUCTION

A. The '057 Patent

Plaintiff, Link Treasure Limited ("Link"), alleges that Baby Trend infringes U.S. Patent No. 5,876,057 ("the '057 Patent"), which is attached hereto as Exhibit 1.

1. The Folding Device Described in the '057 Patent

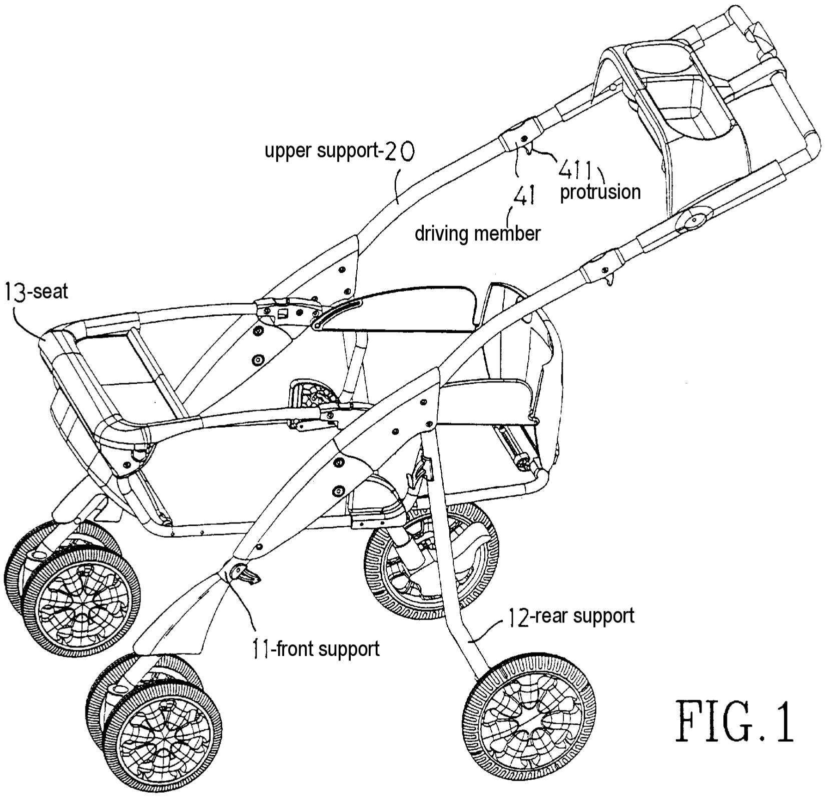
upper support-20
411
protrusion
41
driving member
13-seat
11-front support
12-rear support

FIG. 1

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The disclosed folding device permits someone to fold a stroller. The stroller of the '057 Patent (shown in Fig. 1,[1] above) has a *seat* 13 for a child to sit in and a frame, to which *seat* 13 is attached. The frame has three basic parts: an *upper support* 20, a *front support* 11, and a *rear support* 12.

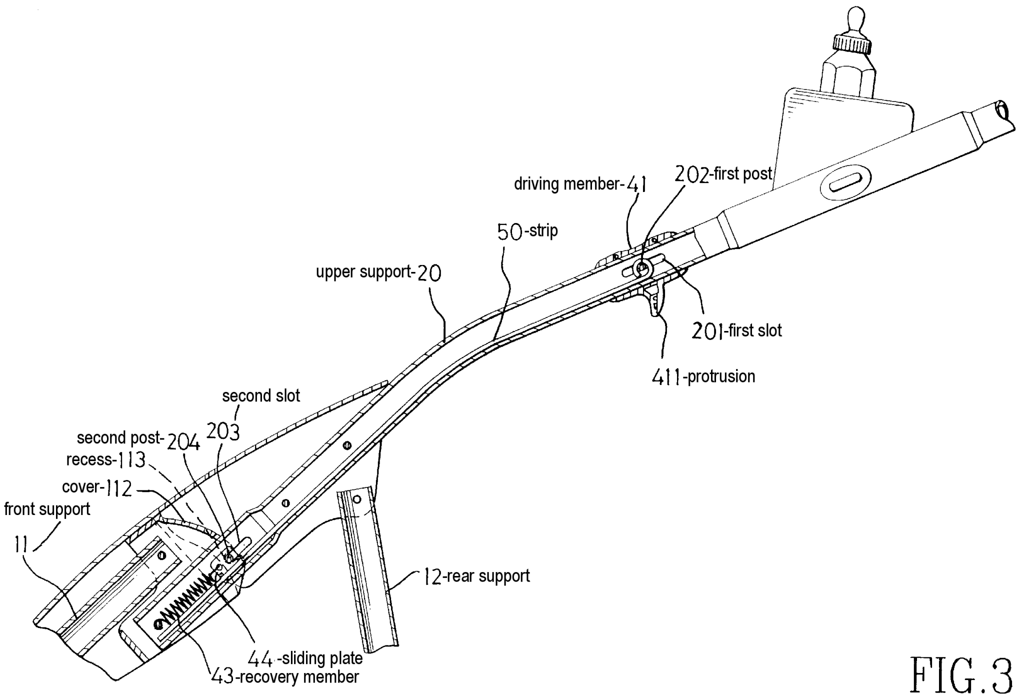
driving member-41
202-first post
50-strip
upper support-20
201-first slot
411-protrusion
second slot
203
second post-204
recess-113
cover-112
front support
11
12-rear support
44-sliding plate
43-recovery member

FIG.3

To fold the stroller, the user pulls on a *protrusion* 411, which is located on *upper support* 20. As shown in Fig. 3, above, *protrusion* 411 is attached to and part of a *driving member* 41; thus, pulling *protrusion* 411 makes

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1 The figures included in this *Markman* Brief are simplified versions of the corresponding figures in the '057 Patent, with some changes in description. The numbered items have been labeled with the terms the '057 Patent assigns to

driving member 41 move along the top part of *upper support* 20. The movement of *driving member* 41 sets in motion a mechanical process within *upper support* 20, whose inner components are shown in Fig. 3.

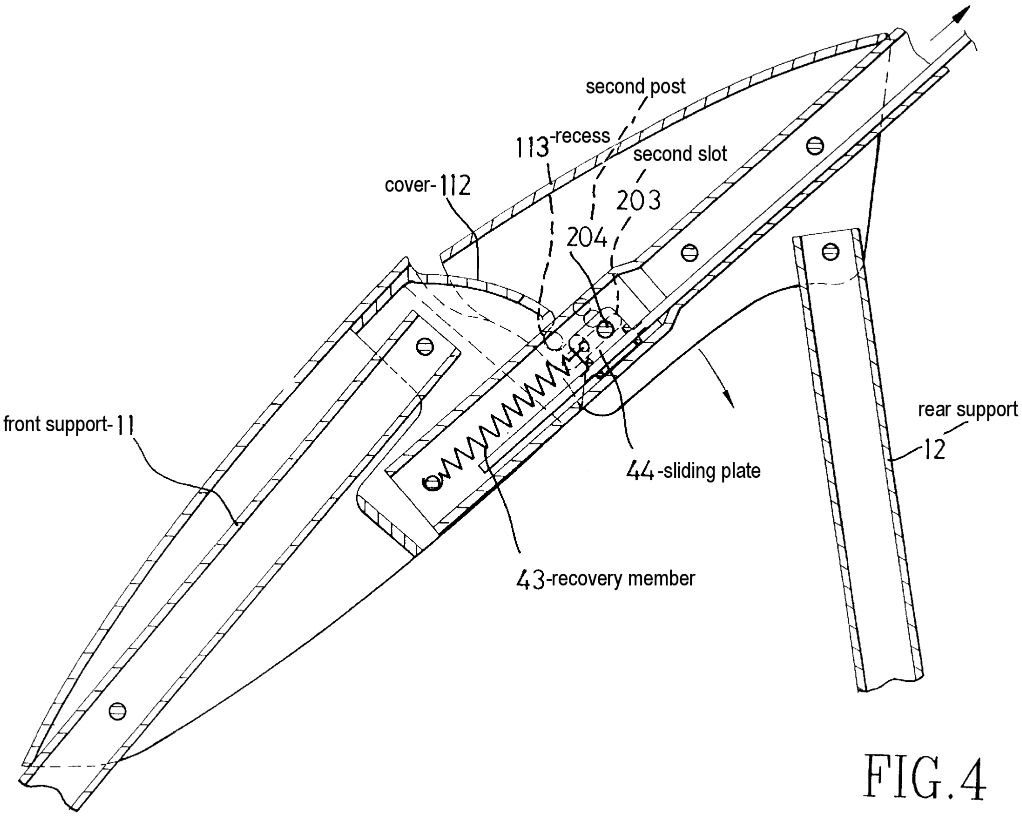
second post
113-recess
second slot
cover-112
203
204
front support-11
rear support
12
44-sliding plate
43-recovery member

FIG.4

Driving member 41 is connected to a *post* 202 (which rests in a *slot* 201). Therefore, when *driving member* 41 moves, *post* 202 also moves within *slot* 201. *Post* 202, in turn, is connected to a strip 50; as such, when *post* 202 moves,

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them. Numbers for certain items that are less relevant to the disputed claim terms have been removed.

strip 50 moves, as well. Thus, pulling on *protrusion* 411 makes *driving member* 41, *post* 202, and strip 50 all simultaneously move in the same direction that *protrusion* 411 moves. As shown in Fig. 3, strip 50 is a long, narrow, and flat piece of material that extends from *driving member* 41 to the bottom of *upper support* 20. While the upper end of strip 50 is attached to *post* 202 (as shown in Fig. 3), the lower end of strip 50 is connected to a sliding plate 44 (as shown in Figs. 3 and 4, above).

In addition to being connected to strip 50, sliding plate 44 is attached to both a *second post* 204 (which moves within a *second slot* 203) and a *recovery member* 43 (which is basically a compression spring that stretches when *protrusion* 411 is pulled). Because they are all connected to each other, all these components move in the same direction when the user pulls *protrusion* 411.

As shown in Fig. 4, above, and Fig. 5, below, *front support* 11 is enclosed in a *cover* 112, a portion of which is cut out as a *recess* 113. When the stroller is locked into its unfolded, usable configuration, *second post* 204 fits into *recess* 113 of *cover* 112 (as shown in Fig. 4). *Second post* 204 provides the sole connection between *upper support* 20 and *front support* 11 to keep the stroller in its unfolded position.

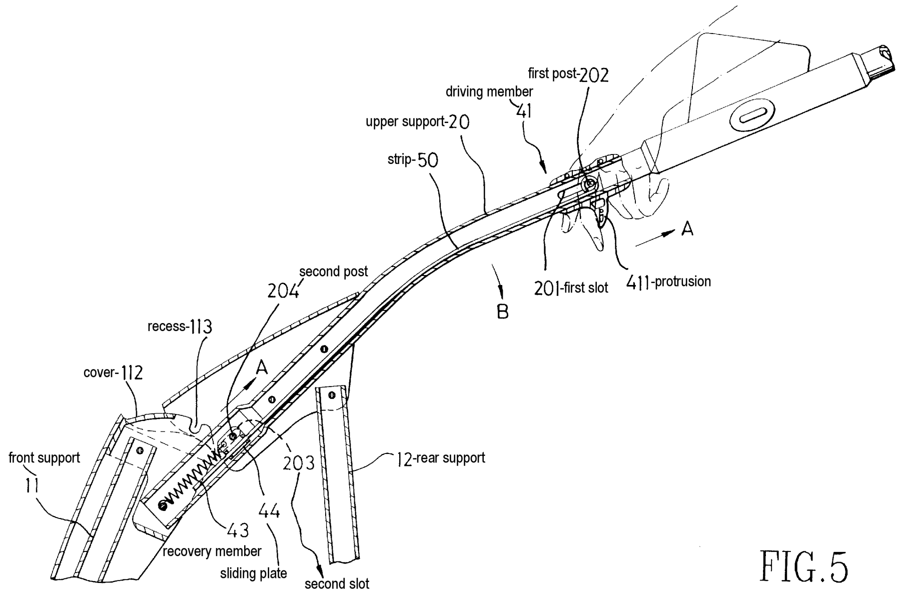
first post-202
driving member
41
upper support-20
strip-50
A
second post
204
201-first slot
411-protrusion
B
recess-113
cover-112
A
front support
11
203
12-rear support
43
44
recovery member
sliding plate
second slot

FIG.5

Fig. 5 shows what occurs as the user begins to fold the stroller by pulling *protrusion* 411 in direction **A**. As the user moves *protrusion* 411 in direction **A** (thus starting the chain of movement with the components described above), the movement of *sliding plate* 44 in direction **A** pulls *second post* 204 out of *recess* 113, thus permitting *upper support* 20 and *front support* 11 to fold. This folding occurs because *second post* 204's puzzle-like fit within *recess* 113 was the only connection between *upper support* 20 and *front support* 11.

Once *second post* 204 is pulled out of *recess* 113, the user has only to push down on *upper support* 20 in direction **B** (shown in Fig. 5), so that *front support* 11, *rear support* 12, and *upper support* 20 fold. Once these components are separated, the stroller can fold, as shown in Fig. 6 of the '057 Patent.

2. The Prosecution History of the '057 Patent and the Prior Art

The application that issued as the '057 Patent ("the '057 Application") was allowed by the U.S. Patent and Trademark Office ("PTO") with the claims of the '057 Patent never being rejected by the PTO. Only three prior art references were cited by the PTO during prosecution of the '057 Application. These references are identified on the cover page of the '057 Patent. Each of these prior art references is a patent previously issued to the named inventor of the '057 Patent, Li-Chu Chen Huang ("Huang"): U.S. Patent No. 5,460,398 ("the '398 Patent"); U.S. Patent No. 5,482,311; and U.S. Patent No. 5,725,238. '057 Patent, at [56].

a. The '398 Patent

The '398 Patent, attached hereto as Exhibit 2, discloses *guiding strips* 221 and *strips* 271. '398 Patent figs. 3–5; col. 3, l. 58–col. 4, l. 5. As shown in Fig. 3 of the '398 Patent, at right, the cross section of the *guiding strips* 221 and *strips* 271 is not round, like that of a cable or wire, but narrow and rectangular; moreover, the largest dimension of the *strips* 221 and *strips* 271 is not width or depth, but length. *See id.* figs. 3–5. Each of the *guiding strips*

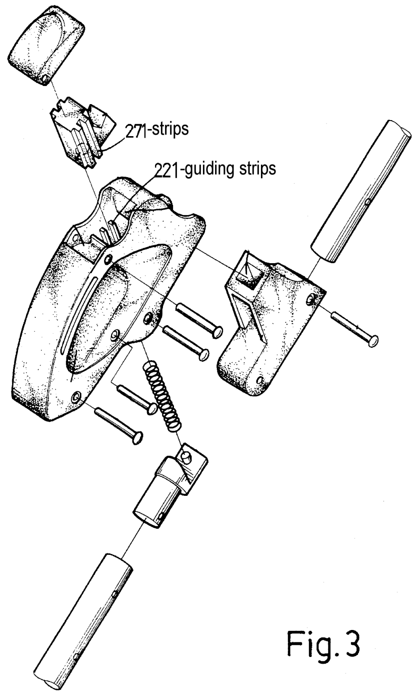

Fig. 3

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221 and *strips* 271 is also flat. *See id.*

b. The '447 Patent

Before the '057 Application was filed, another patent application was filed by Huang (the inventor of the '057 Patent) for an invention similar to that claimed in the '057 Patent. This patent application issued as U.S. Patent No. 5,769,447 ("the '447 Patent"), which is attached hereto as Exhibit 3.

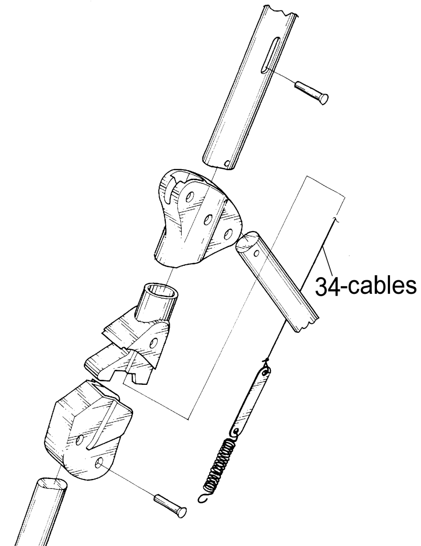

FIG. 4

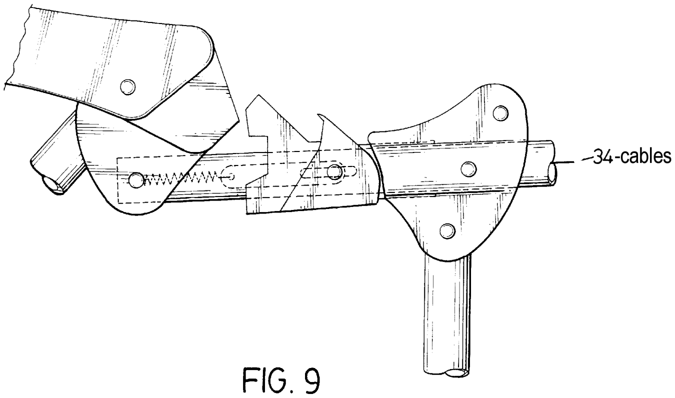

FIG. 9

Significantly, and without explanation, the '447 Patent was not cited to the PTO by Huang during prosecution of the '057 Patent.[2] The '447 Patent discloses and describes *cables* 34 located within and extending through a *handle tube* 11. '447 Patent figs 3–9; col. 1, ll. 40–43; 57–59; col. 3, ll. 38–44; col. 3, l.

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2 If the '447 Patent had been known by, the PTO, the '447 Patent would have been listed on the cover page of the '057 Patent.

66–col. 4, l. 1; col. 4, ll. 11–18. The *cables* 34 interact with components that are analogous to components disclosed in the '057 Patent. *See id.* figs. 4, 9.[3]

c. The '046 Patent

Like the '447 Patent, U.S. Patent No. 6,139,046 ("the '046 Patent"), which is attached hereto as Exhibit 4, discloses an invention similar to the '057 Patent, but was not cited on the face of the '057 Patent. As shown in Figs. 6 and 7, the '046 Patent discloses a *slide actuator* 102 and *finger* 104 mounted around an *upper frame member* 62 via a *pin or rivet* 106. '046 Patent figs. 5–7; col. 7, ll. 27–37. The *pin or rivet* 106 is confined by, but can travel within, a *slot* 108 in the periphery of the *upper frame member* 62, and connected to a *wire* 100. *Id.* The '046 Patent further discloses a *lower fairing* 74 having *notches* 84 that engage a sliding *pin* 94, which is connected to a *spring* 98. *Id.* figs. 5–7, col. 7, ll. 27–41.

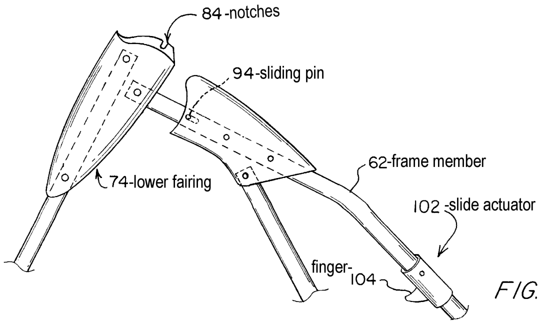
84 -notches
94-sliding pin
62-frame member
74-lower fairing
102 -slide actuator
finger-104

FIG. 6

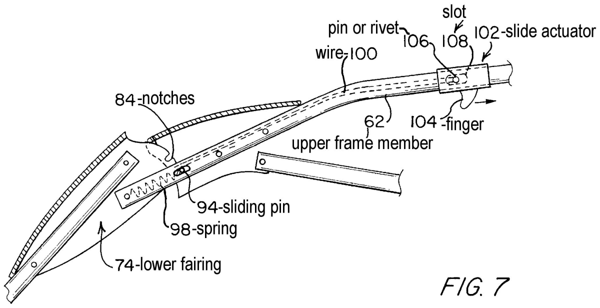
slot
pin or rivet-106
108
102-slide actuator
wire-100
84-notches
62
104 -finger
upper frame member
94-sliding pin
98-spring
74-lower fairing

FIG. 7

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[3] *See* 35 U.S.C. §§ 102, 103. While Baby Trend disputes the validity of the '057 Patent in view of the prior art (based on Link's LPR 4.1 Infringement Contentions), the validity of the '057 Patent is not at issue in this *Markman* Brief.

d. *Link Used Narrow Claim Terms to Avoid the Prior Art*

As is apparent in view of the disclosures of the '398, '447, and '046 Patents, copious prior art exists relating to the '057 Patent. Yet, despite the prior art field being "crowded," the PTO did not once reject the claims in the '057 Application. Indeed, the '057 Application was quickly granted because, in a clear attempt to avoid the prior art,[4] Link used very narrow, finely-crafted terms to describe and claim the invention.

B. **All Four Disputed Claim Terms Appear in Claim 1 of the '057 Patent**

Link asserts that Baby Trend has infringed claim 1 of the '057 Patent. Claim 1 reads as follows, with the terms in dispute underlined and italicized:

1. A folding device for a stroller comprising:

a driving member movably mounted around a top portion of an upper support of the stroller and having a protrusion extending out therefrom, a first post movably received within a first slot defined in a periphery of the upper support and securely connected with said driving member, and a *strip* extending within the upper support and having a first distal end securely connected with said first post;

a driven member having a second post movably received within a second slot defined in a periphery of the upper support and a *sliding plate* slidably received within the upper support and

[4] As set forth in detail in Baby Trend's Invalidity Contentions Pursuant to LPR 4.3 and Exhibit A thereto, Baby Trend contends that, based on Link's LPR 4.1 Infringement Contentions, the claims of the '057 Patent did not successfully avoid applicable prior art and are, thus, invalid.

securely connected with said second post and a second distal end of said *strip*;

a recovery member having a first end securely mounted to a distal end of the upper support and a second end of which is securely connected with said sliding plate [the "Recovery Member Location Limitation"]; and

a cover enclosing a top end of a front support of the stroller and *having a recess defined therein*; said recess being defined to detachably receive said second post therein.

On March 23, 2007, the parties filed with the Court their Joint Claim Construction Statement pursuant to LPR 6.3, which sets forth each party's respective definitions and supporting evidence for the four disputed claim terms in this matter. *See* doc. no. 49 [hereinafter JCCS, attach. hereto as Ex. A].

II. ARGUMENT

A. Legal Standards for Claim Construction

1. Claim Terms Are Presumed to Carry Their Ordinary Meaning

Claim construction is an issue of law for the Court to decide. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Claim terms are heavily presumed to carry their ordinary meaning. *See, e.g.*, *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc), *cert. denied*, 126 S. Ct. 1332 (2006). "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question" after reading the term "not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at 1313. Indeed, "the specification necessarily informs the proper construction of the claims." *Id.* at 1316.

2. Intrinsic Evidence Is the Most Important Evidence for Claim Construction

The Federal Circuit makes clear that a patent's "intrinsic evidence" is the most important guide to proper claim construction. In construing claims, Courts must focus on a patent's intrinsic evidence, in the following order: the claim language itself, the specification, and the prosecution history. *See Markman*, 52 F.3d at 979; *see also Phillips*, 415 F.3d at 1314; *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The specification is of particular significance to the claim construction process, as claims "must be read in view of the specification, of which they are a part." *Markman*, 52 F.3d at 979. "The close kinship between the written description and the claims is enforced by the statutory requirement that the specification describe the claimed invention in 'full, clear, concise, and exact terms.'" *Phillips*, 415 F.3d at 1316 (quoting 35 U.S.C. § 112, ¶ 1). Therefore, "the specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Id.* at 1315 (quoting *Vitronics*, 90 F.3d at 1582).

It is well understood that a patent cannot claim more than its specification discloses and enables. "[T]he role of the specification is to describe and enable the invention. In turn, the claims cannot be of broader scope than the invention that is set forth in the specification." *On Demand Mach. Corp. v. Ingram Indus., Inc.*, 442 F.3d 1331, 1340 (Fed. Cir. 2006), *cert. denied*, 127 S. Ct. 683 (2006). "[T]he written description 'can provide guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, even if the guidance is not provided in explicit definitional format.'" *Id.* (internal citations omitted); *see also Old Town Canoe Co. v. Confluence Holdings Corp.*, 448 F.3d 1309, 1316 (Fed. Cir. 2006). Moreover, while claims generally are not to be limited to cover only what is disclosed as the preferred embodiment of an invention, where the "invention is described throughout the specification [just] as it is claimed," "there is no basis" for according a meaning to the claims that is broader than what is described. *Toro Co. v. While Consol. Indus.*, Inc., 199 F.3d 1295, 1301–02 (Fed. Cir. 1999) ("This is not a case of limiting the claims to a 'preferred embodiment' of an invention that has been more broadly disclosed. . . . No such broader invention is here described. Instead, the invention is described throughout the specification as it is claimed . . . ."); *see also Wang Labs. v. AOL, Inc.*, 197 F.3d 1377, 1383 (Fed. Cir. 1999) (holding that since the specification of the patent-at-issue described only one embodiment of the claimed invention, "the claims were correctly interpreted as limited thereto."). Thus, a claim construction should not create ownership of an invention that is beyond the breadth of, or divorced from, the disclosure or objects of the invention. *See Old Town Canoe*, 448 F.3d at 1316; *see also Nystrom v. Trex Co., Inc.*, 424 F.3d 1136, 1144–45 (Fed. Cir. 2005).

3. Extrinsic Evidence Also May be Considered

In some cases, the intrinsic evidence does not adequately provide a meaning for claim terms. *See, e.g., Vitronics*, 90 F.3d at 1584 (stating that where the "intrinsic evidence is insufficient to enable the court to determine the meaning of the asserted claims . . . extrinsic evidence . . . may also properly be relied on to understand the technology and to construe the claims."). In such instances, Courts may examine "'extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.'" *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir 2004)). While generally "'less significant than the intrinsic record in determining the legally operative meaning of claim language,'" extrinsic evidence is nonetheless useful in the process of defining claim terms. *Id.* at 1317 (quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004)) (internal quotations omitted). Such extrinsic evidence "consists of all evidence external to the patent and prosecution history," and includes dictionaries, encyclopedias, and treatises; prior art, such as patents and publications; and expert testimony. *Markman*, 53 F.3d at 890; *Vitronics*, 90 F.3d at 1584–85; *Phillips*, 415 F.3d at 1317–19.

a. Dictionaries, Encyclopedias, and Treatises

Because dictionaries "endeavor to collect the accepted meanings of terms used in various fields of science and technology, those resources [are] among the many tools that can assist the court in determining the meaning of a particular technology to those of skill in the art of the invention." *Phillips*, 415 F.3d at 1318. Indeed, "[d]ictionaries or comparable sources are often useful to assist in understanding the commonly understood meaning of words and have been used both by [the Federal Circuit] and the Supreme Court in claim interpretation." *Id.* at 1322. While it is true that any reliance on dictionaries must comport with the intrinsic evidence, the Federal Circuit has held that in cases in which "there is no suggestion that the intrinsic evidence defines [the term at issue], one may look to . . . dictionaries for assistance in determining that term's meaning to a person of ordinary skill in the art." *Atofina v. Great Lakes Chem. Co.*, 441 F.3d 991, 996 (Fed. Cir. 2006) (holding that the district court "correctly accepted [the] ordinary and customary meaning" of the term at issue as articulated in a dictionary).

b. Prior Art

Like dictionaries, prior art to the patent-at-issue is extrinsic evidence, "whether or not cited in the specification or the file history." *Vitronics*, 90 F.3d at 1584. Prior art and other contemporaneous documents can "demonstrate how a disputed term is used by those skilled in the art." *Id.* Indeed, "[s]uch art may make it unnecessary to rely on expert testimony. . . . As compared to expert testimony, which often only indicates what a particular expert believes a term means, prior art references may also be more indicative of what all those skilled in the art generally believe a certain term means." *Id.*

c. Expert Testimony

Expert testimony also may be considered. "However, conclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court." *Phillips*, 415 F.3d at 1318; *see also Network Commerce, Inc. v. Microsoft Corp.*, 422 F.3d 1353, 1361 (Fed. Cir. 2005) (same). Thus, "a court should discount any expert testimony 'that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history.'" *Phillips*, 415 F.3d at 1318 (quoting *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998)). "Indeed, where the patent documents are unambiguous, expert testimony regarding the meaning of a claim is entitled to no weight." *Vitronics*, 90 F.3d at 1584. As the Federal Circuit has explained, "'[a]ny other rule would be unfair to competitors who must be able to rely on the patent documents themselves, without consideration of expert opinion that then does not even exist, in ascertaining the scope of a patentee's right to exclude.'" *Id.* (quoting *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1578 (Fed. Cir. 1995)). Nonetheless, expert testimony may be used

> to provide background on the technology at issue, to explain how an invention works, to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field.

Phillips, 415 F.3d at 1318. Regardless of how it is used, "opinion testimony on claim construction should be treated with the utmost caution," *Vitronics*, 90 F.3d at 1585, as it "is generated at the time of and for the purpose of litigation and thus can suffer from bias," *Phillips*, 415 F.3d at 1318.

Even in the "rare instances" where testimony "on the *proper construction* of a disputed claim term" may be permitted, "prior art documents and dictionaries . . . are more objective and reliable guides. Unlike expert testimony, these sources are accessible to the public in advance of litigation. They are to be preferred over opinion testimony. . . ." *Vitronics*, 90 F.3d at 1585; *see also Phillips*, 415 F.3d at 1322 ("A dictionary definition has the value of being an unbiased source 'accessible to the public in advance of litigation.'" (quoting *Vitronics*, 90 F.3d at 1585)). Regardless of the types of extrinsic evidence relied upon, however, it is paramount that it is not "used to change the meaning of claims in derogation of the 'indisputable public records consisting of the claims, the specification and the prosecution history,' thereby undermining the public notice function of patents." *Id.* at 1319 (quoting *Southwall Techs.*, 54 F.3d at 1578).

B. Construction of Disputed Terms

The '057 Patent claims and discloses a specific folding mechanism, and nothing more. As discussed above, this likely was done in an attempt to avoid significant prosecution in view of the relevant prior art references. This attempt clearly was successful, as Link's narrowly crafted patent was allowed without any rejection of the patent claims.

The primary difference between Link and Baby Trend regarding claim construction is that Baby Trend gives the disputed claim terms their ordinary meanings, as revealed in both the intrinsic and extrinsic evidence, including dictionaries and other patents. In contrast, outside of the specific, narrow disclosure of the '057 Patent, Link relies solely on definitions from its hired expert witness, Jonathan S. Colton. Indeed, rather than attempt to set forth definitions based upon the resources available to one of ordinary skill in the art, Link seeks, instead, to transcend the basic canons of claim construction as they have been identified by the Court of Appeals for the Federal Circuit ("Federal Circuit"). *See Southwall Techs.*, 54 F.3d at 1578 ("[E]xpert affidavits cannot alter [the] meaning" accorded by "the indisputable public record consisting of the claims, the specification and the prosecution history. . . . Any other rule would be unfair to competitors who must be able to rely on the patent documents themselves, without consideration of expert opinion that then does not even exist, in ascertaining the scope of a patentee's right to exclude."); *see also Phillips*, 415 F.3d at 1318 ("[C]onclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court. . . . [A] court should discount any expert testimony 'that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent.'" (quoting *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998))); *Vitronics*, 90 F.3d at 1583 (same); *N. Telecom Ltd. v. Samsung Elecs. Co., Ltd.*, 215 F.3d 1281, 1296 (Fed. Cir. 2000) (same). As is shown below, however, Baby Trend's definitions appropriately balance the legal standards for claim construction with the available evidence—both intrinsic and extrinsic.

C. The Disputed Terms

1. *Sliding Plate*

Baby Trend's Proposed Definition: "A sheet that is thin, flat, and rigid and moves along and in contact with the upper support."

Link's Proposed Definition: "A relatively thin sheet (plate) that can move along and in contact with another element."

Simply stated, Link disclosed and claimed a specific mechanical component, a *sliding plate*. In view of both the intrinsic evidence—the claims and the specification—and the extrinsic evidence, it is clear that Baby Trend's definition of "a sheet that is thin, flat, and rigid and moves along and in contact with the upper support" is correct.

Claim construction begins with the language of the claims themselves, read in light of the specification. *See, e.g.*, *Phillips*, 415 F.3d at 1312–14. Claim 1 requires that the *sliding plate* is "slidably received within the upper support." '057 Patent claim 1. This requirement for the *sliding plate* is consistent with Baby Trend's definition that the *sliding plate* "moves along and in contact with the upper support."

The specification of the '057 Patent specifically shows and describes a *sliding plate* and, significantly, does not include any language indicating that any structure other than a *sliding plate* can be used. Indeed, the following two passages are the **only** parts of the specification discussing the *sliding plate*:

> A first distal end of a strip 50 which extends within the upper support 20 is securely connected to the post 202 and a second distal end thereof is securely connected to a sliding plate 44 slidably received within the upper support 20. A first end of the recovery member 43 is securely mounted on a distal end of the upper support 20 and a second end thereof is securely connected to the sliding plate 44, thereby allowing a reciprocating movement of the sliding plate 44 due to the provision of the recovery member 43. Furthermore, a second slot 203 is defined in a periphery of the upper support 20 and a second post 204 securely connected with the sliding plate 44 is slidably received therein.
>
> . . . .
>
> Therefore, referring to FIGS. 4 and 5, when the protrusion 411 of the driving member 41 is pulled in a direction as shown by arrow A, due to the strip 50 being securely connected between the first post 202 slidably received within the first slot 201 and the sliding plate 44, the second post 204 slidably received within the second slot 203 will also be pulled in the same direction, accordingly the second post 204 will leave the recess 113 and the upper support 20 is able to be separated from the front support 11 by pressing the upper support 20 downward in a direction as shown by arrow B. Further, since the recovery member 43 is securely mounted between the distal end of the upper support 20 and the sliding plate 44, after the force applied by the user to the protrusion 411 is released, the sliding plate 44 returns to its original position due to the recovery force provided by the recovery member 43.

'057 Patent col. 2, ll. 37–49; col. 2, l. 55–col. 3, l. 3. Thus, here, the "invention is described throughout the specification [just] as it is claimed." *Toro*, 199 F.3d at 1301–02; *see also On Demand*, 442 F.3d at 1340; *Old Town Canoe*, 448 F.3d at 1316; *Wang Labs.*, 197 F.3d at 1383. This intrinsic evidence shows that ***sliding plate*** should be defined as "a sheet that is thin, flat, and rigid and moves along and in contact with the upper support."

Baby Trend's proffered claim construction is consistent with, and further supported by, the extrinsic evidence. First, although not prior art to the '057 Patent, U.S. Patent No. 6,976,685 ("the '685 Patent"), which is attached hereto as Exhibit 5, was filed less than five years after the '057 Application was filed and discloses a device similar to that disclosed in the '057 Patent. As shown in Figs. 5C and 11B of the '685 Patent, the term *sliding plate* 38 is used to describe a component that is flat and, relative to its length and width, thin. '685 Patent figs. 5C, 11B. When the *sliding plate* 38 is pulled by the user via the *handle portion* 142, the *sliding plate* 38 slides within and in contact with a *housing* 136. *Id.* figs. 5C, 11B; col. 7, ll. 17–27, 35–56; col. 8, ll. 1–10, 16–25; col. 9, ll. 12–22; col. 10, ll. 21–25. Thus, the usage of ***sliding plate*** in the '685 Patent supports Baby Trend's definition.

Second, while the term _sliding plate_ does not have a standard meaning that can be found in a dictionary, the verb "sliding" and the noun "plate" are common terms whose meaning is apparent in dictionaries. Thus, such extrinsic evidence is helpful in according a meaning to the term _sliding plate_. Indeed, dictionary definitions of the verb _sliding_ and the noun _plate_ further support Baby Trend's definition.

At least one dictionary defines _plate_ as a "smooth, flat, thin, rigid body of uniform thickness." JCCS, at 8. Several dictionaries also define a _plate_ as something that is "thin" and "flat." *Id.* at 7–9. Moreover, these definitions also describe the type of material that is in the form of a _plate_, which is in nearly every case described as "metal." *Id.* The association of "metal," which is a generally rigid material, in the definition of the term _plate_ implies that a _plate_ also is rigid. Moreover, multiple dictionaries indicate that to slide means both (1) to move relative to some other surface and (2) to be in contact with that other surface while moving. *Id.* at 6–7. Indeed, one dictionary defines slide as to "move along a smooth surface while in contact with it," *id.* at 6, and other dictionary definitions are nearly identical, *see id.* at 6–7.

Thus, the '057 Patent's intrinsic evidence, the disclosure of the '685 Patent, and the dictionary definitions of the terms *sliding* and *plate* all support Baby Trend's definition of the term *sliding plate*.

2. *Strip*

Baby Trend's Proposed Definition: "A piece of material that is long, narrow, and flat."

Link's Proposed Definition: "A relatively thin and inextensible piece of material of uniform width."

As with the component claimed as a *sliding plate*, Link disclosed and claimed another specific mechanical component, a *strip*. In view of both the intrinsic evidence—the claims and the specification—and the extrinsic evidence, it is clear that Baby Trend's definition of "a piece of material that is long, narrow, and flat" is correct.

Claim construction begins with the language of the claims themselves, read in light of the specification. *See, e.g.*, *Phillips*, 415 F.3d at 1312–14. Claim 1 sets forth that the *strip* extends within the upper support and has two distal ends. The first distal end is securely connected with the first post which, in turn, is securely connected with the driving member. The second distal end is securely connected with the sliding plate. The use of the term extends in the claim expresses that the *strip* has a length to it. In addition, the claim itself suggests that the *strip* is narrow, as it extends through the upper support of the stroller.

The specification of the '057 Patent specifically shows and describes a *strip* and, significantly, does not include any language indicating that any structure other than a *strip* can be used. Indeed, the following two sentences are the **only** two sentences in the specification discussing the *strip*:

> A first distal end of a strip 50 which extends within the upper support 20 is securely connected to the post 202 and a second distal end thereof is securely connected to a sliding plate 44 slidably received within the upper support 20.
>
> . . . .
>
> Therefore, referring to FIGS. 4 and 5, when the protrusion 411 of the driving member 41 is pulled in a direction as shown by arrow A, due to the strip 50 being securely connected between the first post 202 slidably received within the first slot 201 and the sliding plate 44, the second post 204 slidably received within the second slot 203 will also be pulled in the same direction, accordingly the second post 204 will leave the recess 113 and the upper support 20 is able to be separated from the front support 11 by pressing the upper support 20 downward in a direction as shown by arrow B.

'057 Patent col. 2, ll. 37–41, 55–65. While additional details for the *strip* are shown and described in the '057 Patent, the term *strip* is clearly used in the '057 Patent to denote a component that is "long, narrow, and flat." Indeed, nothing in the '057 Patent indicates, or even suggests, that *strip* has a different meaning here.

See Toro, 199 F.3d at 1301–02; *see also On Demand*, 442 F.3d at 1340; *Old Town Canoe*, 448 F.3d at 1316; *Wang Labs.*, 197 F.3d at 1383.

The extrinsic evidence also confirms that Baby Trend's definition of *strip* is correct. In particular, the extrinsic evidence shows that Link's use of the term *strip* refers to a specific type of component; namely, a component that is "long, narrow, and flat." At least one dictionary defines strip as "metal in the form of narrow flat bars." JCCS, at 3. Moreover, several dictionaries define strip as something that is "long" and "narrow." *Id.* at 3–4. These definitions also describe the type of material that is in the form of a strip: cloth, paper, plastic, metal, land. *Id.* Each of these materials evokes an image of being flat when cut or divided into strips. These ordinary dictionary definitions are consistent with the usage of *strip* in the specification and claims of the '057 Patent.

The '398 Patent, discussed above, provides further extrinsic support for Baby Trend's definition of *strip*. The disclosed *guiding strips* 221 and *strips* 271 have a cross section that is narrow and rectangular, not round like that of a cable or wire. *See* '398 Patent figs. 3, 4. The largest dimension of the *strips* 221 and *strips* 271 is not width or depth, but length. *See id.* As is shown in Figures 3 and 4 of the '398 Patent, each of the *guiding strips* 221 and *strips* 271 is also flat. *See id.*

Moreover, the '447 Patent, also discussed above, discloses and describes *cables* 34 located within and extending through a *handle tube* 11. '447 Patent figs. 4, 9; col. 3, ll. 38–44. Cables have a generally round cross section, not one that is narrow, flat, or rectangular. In view of the *guiding strips* 221 and *strips* 271 disclosed in the '398 Patent and *strip* 50 disclosed in the '057 Patent, the use of the term *cables* 34 in the '447 Patent makes clear that Huang (the named inventor of all three patents) necessarily attributes a different meaning to the term *strips*, on the one hand, and the term *cables*, on the other.

Similar to the '398 Patent, U.S. Patent No. 6,330,898 ("the '898 Patent"), which is attached hereto as Exhibit 6, also discloses a *tie-up belt* 14 that is a "detachable strip." '898 Patent fig. 2; col. 3, ll. 53–54. As is shown in Figure 2 of the '898 Patent, the *tie-up belt* 14 is a flat piece of material that has a substantially greater length than width or thickness—in other words, the *tie-up belt* 14 is relatively narrow as compared to its length. '898 Patent fig. 2. Thus, the disclosures of the '398 and '898 Patents further support Baby Trend's "long, narrow, and flat" definition of *strip*.

The contemporaneous disclosures of the '398, '447, and '898 Patents and dictionary definitions further support Baby Trend's "long, narrow, and flat" definition of *strip*. In short, Link narrowly claimed its alleged invention by using specific terms such as *strip*. Link received the benefit of using these specific terms when its patent application was allowed, without any rejection by the PTO. However, Link may not now avoid its usage of narrow terms in later litigation.

3. *A Recovery Member Having a First End Securely Mounted to a Distal End of the Upper Support and a Second End of Which Is Securely Connected with Said Sliding Plate* ("Recovery Member Location Limitation")

Baby Trend's Proposed Definition: "The recovery member is positioned between the sliding plate and the distal end of the upper support by the recovery member's first end being securely mounted at or near the edge of the upper support that is farthest away from the handle and its second end being securely connected to the sliding plate at a position between the first end of the recovery member and the handle."

Link's Proposed Definition: "One or more components that exert a force that returns one or more other components to their original position(s) or location(s) and [A recovery member] that is positioned between the sliding plate and one end of the upper support such that the recovery member's first end is attached at or near the end of the upper support that is farthest away from the handle in a manner such that the recovery member does not come loose during normal operation of the mechanism and that is attached at another end to the sliding plate in a manner such that the recovery member does not come loose during normal operation of the mechanism."

The dispute regarding the Recovery Member Location Limitation focuses solely on the location of the *recovery member* within the claimed folding device—in particular, the location of the *recovery member* relative to the claimed *distal end of the upper support* and *sliding plate*. In view of both the intrinsic evidence—the claims and the specification—and the extrinsic evidence, it is clear that Baby Trend's construction is correct.

a. The Intrinsic Evidence Supports Baby Trend's Definition

Claim construction begins with the language of the claims themselves, read in light of the specification. *See, e.g.*, *Phillips*, 415 F.3d at 1312–14. The language of claim 1 itself sets forth the position of the *recovery member* to the *sliding plate* and *upper support*: "*a recovery member having a first end securely mounted to a distal end of the upper support and a second end of which is securely connected with said sliding plate.*" That is, the *recovery member* has two ends: one end is securely mounted to the *distal end of the upper support* and the other end is securely connected to the *sliding plate*.

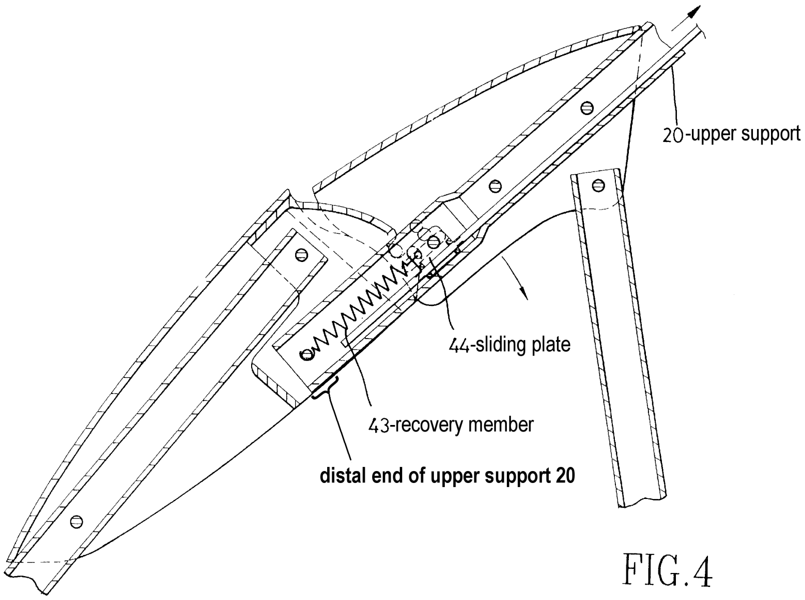

FIG.4

The specification provides further guidance on the relative positions of the *recovery member*, *upper support*, and *sliding plate* by setting forth how the '057 Patent uses *distal end of the upper support*: "the *recovery member* 43 is securely mounted **between** the *distal end of the upper support* 20 and the *sliding plate* 44." '057 Patent col. 2, ll. 65–67 (emphasis added). This sentence clarifies that the *distal end of the upper support* is "at or near the edge of the upper support that is farthest away from the handle." Indeed, the *recovery member* 43 could not be between the *distal end of the upper support* 20 and the *sliding plate* 44 if the *distal end of the upper support* encompassed any more of the *upper support* than that portion "at or near the edge of the upper support that is farthest away from the handle."

With this definition for *distal end of the upper support*, the relative positions of the *upper support*, *sliding plate*, and *recovery member* are defined as in Baby Trend's definition: "the recovery member is positioned between the sliding plate and the distal end of the upper support by the recovery member's first end being securely mounted at or near the edge of the upper support that is farthest away from the handle and its second end being securely connected to the sliding plate at a position between the first end of the recovery member and the handle."

The following sections break down Baby Trend's definition into three portions to discuss how each portion relates to the intrinsic evidence:

i. "The recovery member is positioned between the sliding plate and the distal end of the upper support"

This part of the definition sets out the broad, general relative position of these parts, based on the claim language and the specification.

ii. The Remainder of Baby Trend's Definition for the Recovery Member Location Limitation Provides Detail for Later Proceedings

The remainder of Baby Trend's definition provides more detail on the relative position of the *sliding plate*, *recovery member*, and *upper support* that is necessary for potential summary judgment briefing and/or jury instructions.

1. "by the recovery member's first end being securely mounted at or near the edge of the upper support that is farthest away from the handle"

This detail in the definition regarding the relative position of the *sliding plate*, *recovery member*, and *upper support* is dictated by the claim language and, as discussed above, the use of *distal end of the upper support* in the '057 Patent to mean that "the recovery member is positioned between the sliding plate and the distal end of the upper support."

Because the *distal end of the upper support* means "at or near the edge of the upper support that is farthest away from the handle," the claim language requires that the first end of the *recovery member* "is securely mounted at or near the edge of the upper support that is farthest away from the handle." Indeed, this is merely a clarification for the Court and jury of the claimed "*a recovery member having a first end securely mounted to a distal end of the upper support*" in view of the use of *distal end of the upper support* in the '057 Patent.

2. "and its second end being securely connected to the sliding plate at a position between the first end of the recovery member and the handle"

The Recovery Member Location Limitation also recites a "second end of [the recovery member] being securely connected with said sliding plate." This comports with the express language of claim 1, which requires that the second end of the *recovery member* be "*securely connected with said sliding plate*." '057 Patent, claim 1.

Moreover, to provide additional clarification in regard to what is at the heart of the parties' dispute over this term, Baby Trend's definition further clarifies the relative positions of the *sliding plate*, *recovery member*, and *upper support* by stating in its definition that the "second end of [the recovery member is] securely connected to the sliding plate at a position between the first end of the recovery member and the handle." This additional clarification sets forth the obvious in view of the '057 Patent's use of *distal end of the upper support*—namely, that starting at or near the edge of the *upper support* that is farthest from the handle and moving towards the handle, the first component in the *upper support* is the *recovery member* and the second component is the *sliding plate*.

b. The Extrinsic Evidence Regarding the Meaning of **Distal End** *Further Supports Baby Trend's Definition*

Once again, the extrinsic evidence supports Baby Trend's definition. First, pertinent prior art describes what constitutes the *distal end* of various things: U.S. Patent No. 5,738,410 ("the '410 Patent"), which is attached hereto as Exhibit 7, discloses a *stroller* 10 having *flexible straps* 36 with *distal ends* 38. '410 Patent figs. 2, 3, 6, 7; col. 6, ll. 41–44. As shown in Figs. 2, 3, 6, and 7, the *distal ends* 38 of each *flexible strap* 36 are located at or near the edge of the *flexible straps* 36 that is farthest away from the point of attachment of the *flexible straps* 36 to the *stroller* 10. *Id.* figs. 2, 3, 6, 7. Likewise, U.S. Patent No. 5,427,402 ("the '402 Patent"), which is attached hereto as Exhibit 8, discloses a *folding device* 10 for a stroller having a distal end of a *handle* 21 mounted to a *positioning seat* 11 via *pin* 147. '402 Patent fig. 3; col. 2, l. 67–col. 3, l. 1. As can be inferred from Figure 3, *pin* 115 extends through *handle* 21 near the edge of *handle* 21 that is farthest away from the top of the *handle* 21. *Id.* fig. 3. In addition, U.S. Patent No. 5,676,386 ("the '386 Patent"), which is attached hereto as Exhibit 9, discloses a *stroller* 20 having a *biasing member* 15 with a first distal end attached to a *boss* 14 and a second distal end attached to a *stub* 330. '386 Patent figs. 3–5; col. 2, ll. 43–48. As shown in Figs. 3–5, the *boss* 14 and *stub* 330 contact the *biasing member* 15 at or near its respective edges. *Id.* figs. 3–5. Thus, this prior art further lends support to Baby Trend's definition.

Second, dictionary definitions show that something that is "distal" is situated away from a relevant point of reference, such as the center of a thing or the point at which the thing is attached to something else. JCCS, at 11–12. A representative dictionary defines "distal" as meaning "located far from a point of reference." *Id.* at 12. Moreover, dictionary definitions for the noun "end" show that the "end" of a thing is, for example, "the furthest or most extreme part or point" of the thing—in other words, the very edge of the thing. *Id.* at 12–14. Indeed, another dictionary defines the noun "end" as "[t]he outside or extreme edge or physical limit" of a thing. *Id.* at 13.

The extrinsic evidence showing that *distal end* is limited to the extreme part or edge is narrower than Baby Trend's definition for *distal end*. The reason for this difference is the intrinsic evidence. As discussed above, the '057 Patent specification states that "the *recovery member* 43 is securely mounted

between the *distal end* of the *upper support* 20 and the *sliding plate* 44." '057 Patent col. 2, ll. 65–67 (emphasis added). While this language shows that the '057 Patent uses *distal end* to mean at or near the edge of the *upper support* 20 that is farthest away from the handle, it also shows that *distal end* is not limited to the extreme part or edge of the *upper support* 20 that is farthest away from the handle. Thus, Baby Trend's definition comports with the clear mandate of the intrinsic evidence and is further supported by relevant extrinsic evidence. *See Toro*, 199 F.3d at 1301–02; *see also On Demand*, 442 F.3d at 1340; *Old Town Canoe*, 448 F.3d at 1316; *Wang Labs.*, 197 F.3d at 1383.

4. *Having a Recess Defined* [*in the Cover*]

Baby Trend's Proposed Definition: "A surface of the cover has a hole or hollow."

Link's Proposed Definition: "Having an indentation or depression in the structure that overlays at least a portion of the top of the front support of the stroller."

Baby Trend does not dispute how to define *cover*, only the definition of *recess defined* [*in the cover*]. The intrinsic evidence squarely supports Baby Trend's definition.

Claim construction begins with the language of the claims themselves, read in light of the specification. *See, e.g., Phillips*, 415 F.3d at 1312–14. First, claim 1 of the '057 Patent begins with the words "[a] folding device for a stroller."

The limitations in claim 1 following this statement set forth the components of the folding device used to place the stroller in a folded or unfolded position. *See* '057 Patent claim 1. It goes without saying that the user of the stroller wants the stroller to stay unfolded until the user intentionally starts the folding process as discussed in Part I.A.1, *supra*. The *recess* in the *cover* is one of the components of the folding device recited in claim 1. *See* '057 Patent claim 1. In particular, claim 1 recites "*a cover . . . having a recess defined therein; said recess being defined to detachably receive said second post therein*." *Id.* Thus, as part of the folding device, the *recess* must be configured to *detachably receive* the *post*.

Second, the specification sets forth that the "*recess* 113 is defined in a *cover* 112" and that the *cover* 112 "has the *second post* 204 detachably received therein." *Id.* col. 2, ll. 53–55. The specification subsequently reiterates that "the *second post* 204 [can] leave the *recess* 113 [such that] the *upper support* 20 is able to be separated from the *front support* 11." *Id.* col. 2, ll. 62–64. Later, the specification indicates that "the *second post* 204 will be easily and slidably received within the *recess* 113 because the *recess* 113 has a rounded contour." *Id.* col. 3, ll. 8–10.

Regardless of the particular contour of the *recess* 113, both the claims and specification make clear that the *recess* 113 must have sufficient depth to receive the *second post* 204 in such a manner that the stroller stays in the unfolded position as shown in Fig. 1. In addition, the *recess* 113 must be configured so that the *second post* 204 is detached "when the *protrusion* 411 of the *driving member* 41 is pulled" by the user of the stroller to fold the stroller. That the *recess* 113 must have such depth to hold the *second post* 204 in the unfolded position is confirmed by Figs. 3–5, and 7 of the '057 Patent, each of which shows the depth of the recess as being approximately 1.5 to 2 times larger than the diameter of the *second post* 204 it receives. This supports Baby Trend's definition, "a surface of the cover has a hole or hollow," because the words "hole" and "hollow" both imply some degree of depth to permit the *recess* 113 to *detachably receive* the *second post* 204 as required by the claim. *See Toro*, 199 F.3d at 1301–02; *see also On Demand*, 442 F.3d at 1340; *Old Town Canoe*, 448 F.3d at 1316; *Wang Labs.*, 197 F.3d at 1383.

Moreover, Baby Trend's definition also finds support in the extrinsic evidence. Indeed, at least one dictionary defines the noun "recess" as "a hollow space inside something," and gives the following example: "the concrete block has a recess in its base." JCCS, at 15. Other dictionaries define "recess" as a/an "indentation," "small hollow," "cleft," or "alcove." *Id.* at 15–16. Thus, both the intrinsic and extrinsic evidence clearly support Baby Trend's definition.

III. CONCLUSION

In contrast to each of Baby Trend's proposed definitions, which are based on proper claim construction analysis of relevant intrinsic and extrinsic evidence, Link, for its proposed definitions, relies on the same intrinsic evidence, but extrinsic evidence limited to an unsupported and conclusory definition of Jonathan Colton. *See* JCCS, at 2, 5, 10, 14. Indeed, as discussed above, the intrinsic evidence only affirms Baby Trend's definitions (or narrower definitions) based on the limited disclosure of the '057 Patent. The sole extrinsic evidence that Link adds to the limited, narrow disclosure of the '057 Patent is Colton's unsupported and conclusory definitions. As discussed in Part II.B, *supra*, this particular extrinsic evidence is entitled to little, if any, weight.

For the foregoing reasons, Baby Trend respectfully requests that this Court interpret the claim terms of the '057 Patent as follows:

A *strip* is "a piece of material that is long, narrow, and flat";

A sliding plate is "a sheet that is thin, flat, and rigid and moves along and in contact with the upper support";

A recovery member having a first end securely mounted to a distal end of the upper support and a second end of which is securely connected with said sliding plate means that "the recovery member is positioned between the sliding plate and the distal end of the upper support by the recovery member's first end being securely mounted at or near the edge of the upper support that is farthest away from the handle and its second end being securely connected to the sliding plate at a position between the first end of the recovery member and the handle"; and

Having a recess defined [in the cover] means that "a surface of the cover has a hole or hollow."

Respectfully submitted this 23d day of April, 2007.

/s/ R. Trevor Carter
R. Trevor Carter (*Pro Hac Vice*)
Daniel M. Lechleiter (*Pro Hac Vice*)
BAKER & DANIELS LLP
300 N. Meridian St., Suite 2700
Indianapolis, IN 46204
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
Email: trevor.carter@bakerd.com
daniel.lechleiter@bakerd.com

/s/ Troy R. Covington
Ann G. Fort (Georgia Bar No. 269995)
Troy R. Covington (Georgia Bar No. 190949)
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309
Telephone: (404) 853-8000
Facsimile: (404) 853-8806
Email: ann.fort@sablaw.com
troy.covington@sablaw.com

Attorneys for Defendant, Baby Trend, Inc.

CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1D, the undersigned counsel hereby certifies that the foregoing **OPENING *MARKMAN* BRIEF ON CLAIM CONSTRUCTION** complies with the font and point selections approved by the Court in LR 5.1B. The foregoing document was prepared on a computer using the Times New Roman font (14 point).

/s/ R. Trevor Carter
R. Trevor Carter (*Pro Hac Vice*)

CERTIFICATE OF SERVICE

This is to certify that the within and foregoing **OPENING *MARKMAN* BRIEF ON CLAIM CONSTRUCTION** was electronically filed via the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Bryan G. Harrison
John P. Fry
Tim T. Xia
Heather C. Brady
MORRIS, MANNING & MARTIN, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, GA 30326-1044

This 23d day of April, 2007.

/s/ R. Trevor Carter
R. Trevor Carter (*Pro Hac Vice*)